(1)

CASE # 84-1993

Supreme Court, U.S.
FILED
JUN 21 1985
ALEXANDER L. STEVAS
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

1985 Term

Victor Lepucki, Plaintiff, John Hyde, Petitioner,	)	
v.	)	On Writ of Certiorari to the U. S. Court of Appeals for the 7th Circuit
Bernard L. Van Wormer, et al, Defendants-Appellees,	)	
AND	)	
Kenneth Pazdur, et al, Plaintiffs, John Hyde, Petitioner,	)	
v.	)	
Blaw-Knox Foundry & Mill Machinery, Defendant-Appellee	)	

Petition for Writ of Certiorari

Pro Se John A. Hyde
Attorney At Law
1224 Hoffman Street
Hammond, Indiana 46327
Phone: 1-219/937-9400

BEST AVAILABLE COPY

691P

ISSUES

1. Did the District Court judge and the Court of Appeals judges depart from the accepted and usual course of conduct?

2. Is it frivolous for Petitioner to raise issues undecided by the Supreme Court?

3. Can a court of law enter any money judgment in anything but lawful dollars?

4. Was the value measured by one dollar fixed by the Constitution?

5. Is the dollar a concept and not a tangible thing?

6. Can anything be a standard of value which has no intrinsic value?

7. Can anything be legal tender which has less value than the standard of value?

8. Can our monetary system function fairly without a standard unit of value?

9. Does obligation paper such as the federal reserve note have any intrinsic value needed so it can function as the standard of value?

10. Do we in fact have any medium of exchange in circulation today that is capable of being used as a standard unit of value?

11. As our currency today is almost exclusively federal reserve notes, what is their market value or their parity with the Spanish milled silver dollar which was adopted by the framers of the Constitution as the standard unit of value?

List of Parties

John Hyde was attorney for Plaintiff Victor Lepucki who filed suit against Defendants Inland Steel Co., Richard Smulevitz, paymaster for Inland, Bernard

Van Wormer, IRS Agent, and Donald Regan, Secretary of the Treasury. Lepucki's suit was filed in the District Court of the Northern District of Indiana, Case No. 83 C 445. Hyde appealed on behalf of himself to the U.S. Court of Appeals for the Seventh Circuit, Case No. 84-2304.

Hyde was also attorney for Plaintiffs Kenneth Pazdur et al in their suit against the Blaw-Knox Foundry and Mill Machinery Co. in the same district court, Case No. 83 C 519, from which Hyde again appealed on his own behalf to the same appellate court, Case No. 84-3041.

The United States may be entitled to notice under 28 U.S.C. 2403(a) because the Constitutionality of federal reserve notes and whether they can Constitutionally be legal tender is in issue, but the United States has actual notice by the Lepucki pleadings.

TABLE OF CONTENTS

page

The issues 1

The parties 2

Table of cases and other authorities . 5

Jurisdictional basis for Petition 7

Constitutional and statutory provisions relied upon 7

Statement of facts 12

Argument 15

Prayer 67

Pursuant to Rule 21(k), Appendix is submitted separately.

TABLE OF CASES & OTHER AUTHORITIES

Cases: page

Bank v. Supervisors, 74 U.S. 26 55

Bronson v. Rodes, 74 U.S. 229 55

Campbell v. Amax Coal Co., 610 F.2d 701 19

Craig v. Missouri, 29 U.S. 410 ... 39, 67

Juilliard v. Greenman, 110 U.S. 421 ..... 58, 59

Knox v. Lee, 79 U.S. 457 42

Laird v. Tatum, 408 U.S. 1 27

Shaw Savell & Albion Co., Ltd. v. Fredericksberg, 189 F.2d 554 34

Smith v. Allwright, 321 U.S. 649 29

Thayer v. Hedges, 22 Ind. 282 61

U.S. v. Smith, 484 F.2d 8 19

Veazie Bank v. Fenno, 19 L.Ed. 482 ..... 40, 41

Other Authorities:

United States Constitution:
Article I, Section 9, Clause 1 .. 34
The 7th Amendment 34

United States Code:
Title 12 U.S.C. 152 ..... 53, 63
Title 12 U.S.C. 411 63

Title 26 U.S.C. 3402 18
Title 31 U.S.C. 314 57
Title 31 U.S.C. 5103 64
Title 31 U.S.C. 5116 56
Title 31 U.S.C. 5117 57
Title 31 U.S.C. 5118 ..... 56, 63

The Coinage Act of 1792 36

Articles of Confederation, Article IX
..... 35

An Essay Concerning the True Origin, Extent and End of Government 30

Journals of the Continental Congress
..... 35, 36

Blackstone's Commentaries on the Law of England 37

Federal Reserve Pamphlets -
Modern Money Mechanics 63
I Bet You Thought 63
The Two Faces of Debt 63

"Pieces of Eight" 28

Jurisdiction of the Supreme Court is based upon 28. U.S.C. 2101(c).

Rule 21 Citations

United States Constitution:

Article I, Section 8 - Powers of congress - The congress shall have power ...
(2) To borrow money on the credit of the United States;

* * *

(5) To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures; ...

Article I, Section 9 - ... a tax or duty may be imposed ... not exceeding ten dollars ...

Amendment 7 - Trial by jury in civil cases.-In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ...

The Coinage Act of 1792 - Sec. 9. And be it further enacted, That there shall be from time to time struck and coined at the said mint, coins of gold, silver, and copper, of the following denominations, values and descriptions ... Dollars or Units-each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one grains and four sixteenth parts of a grain of pure, or four hundred

and sixteen grains of standard silver.

United States Code -

Title 12 -

Section 152 - Lawful money reserve of associations issuing gold notes; receiving notes of other associations. Every association organized under section 151 of this title shall at all times keep on hand not less than 25 per centum of its outstanding circulation, in gold or silver coin of the United States; ... and shall be subject to all the provisions of this chapter: Provided, That, in applying the same to associations organized for issuing gold notes, the terms "lawful money" and "lawful money of the United States" shall be construed to mean gold or silver coin of the United States ...

Section 411 - Issuance to reserve banks; nature of obligation; redemption. Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are hereby authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank.

§ 314. Standard unit of value

The dollar of gold nine-tenths fine consisting of the weight determined under the provisions of section 821 of this title shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity.

§ 5103. Legal tender

United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

§ 5116. Buying and selling gold and silver

(a)(1) With the approval of the President, the Secretary of the Treasury may—

(A) buy and sell gold in the way, in amounts, at rates, and on conditions the Secretary considers most advantageous to the public interest; and

(B) buy the gold with any direct obligations of the United States Government or United States coins and currency authorized by law, or with amounts in the Treasury not otherwise appropriated.

(2) Amounts received from the purchase of gold are an asset of the general fund of the Treasury. Amounts received from the sale of gold shall be deposited in the general fund of the Treasury.

(b)(1) The Secretary shall buy silver mined from natural deposits in the United States, or in a territory or possession of the United States, that is brought to a United States mint or assay office within one year after the month in which the ore from which it is derived was mined. The Secretary shall pay $1.25 a fine troy ounce for the silver. The Secretary may use the coinage metal fund under section 5111(b) of this title to buy silver under this subsection.

(2) The Secretary may sell or use Government silver to mint coins, except silver transferred to stockpiles established under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.). The Secretary shall sell silver under conditions the Secretary considers appropriate for at least $1.292929292 a fine troy ounce.

§ 5117. Transferring gold and gold certificates

(a) All right, title, and interest, and every claim of the Board of Governors of the Federal Reserve System, a Federal reserve bank, and a Federal reserve agent, in and to gold is transferred to and vests in the United States Government to be held in the Treasury. Payment for the transferred gold is made by crediting equivalent amounts in dollars in accounts established in the Treasury under the 15th paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 467). Gold not in the possession of the Government shall be held in custody for the Government and delivered on the order of the Secretary of the Treasury. The Board of Governors, Federal reserve banks, and Federal reserve agents shall give instructions and take action necessary to ensure that the gold is so held and delivered.

(b) The Secretary shall issue gold certificates against gold transferred under subsection (a) of this section. The Secretary may issue gold certificates against other gold held in the Treasury. The Secretary may prescribe the form and denominations of the certificates. The amount of outstanding certificates may be not more than the value (for the purpose of issuing those certificates, of 42 and two-ninths dollars a fine troy ounce) of the gold held against gold certificates. The Secretary shall hold gold in the Treasury equal to the required dollar amount as security for gold certificates issued after January 29, 1934.

(c) With the approval of the President, the Secretary may prescribe regulations the Secretary considers necessary to carry out this section.

(Pub L. 97-258, Sept. 13, 1982, 96 Stat. 984.)

§ 5118. Gold clauses and consent to sue

(a) In this section—

(1) "gold clause" means a provision in or related to an obligation alleging to give the obligee a right to require payment in—

(A) gold;

(B) a particular United States coin or currency; or

(C) United States money measured in gold or a particular United States coin or currency.

(2) "public debt obligation" means a domestic obligation issued or guaranteed by the United States Government to repay money or interest.

(b) The United States Government may not pay out or deliver any gold coin. A person lawfully holding United States coins and currency may present the coins and currency to the Secretary of the Treasury for exchange (dollar for dollar) for other United States coins and currency that may be lawfully held. The Secretary shall make the exchange under regulations prescribed by the Secretary.

(c)(1) The Government withdraws its consent given to anyone to assert against the Government, its agencies, or its officers, employees, or agents, a claim—

(A) on a gold clause public debt obligation or interest on the obligation;

(B) for United States coins or currency; or

(C) arising out of the surrender, requisition, seizure, or acquisition of United States coins or currency, gold, or silver involving the effect or validity of a change in the metallic content of the dollar or in a regulation about the value of money.

(2) Paragraph (1) of this subsection does not apply to a proceeding in which no claim is made for payment or credit in an amount greater than the face or nominal value in dollars of public debt obligations or United States coins or currency involved in the proceeding.

(3) Except when consent is not withdrawn under this subsection, an amount appropriated for payment on public debt obligations and for United States coins and currency may be expended only dollar for dollar.

(d)(1) In this subsection, "obligation" means any obligation (except United States currency) payable in United States money.

(2) An obligation issued containing a gold clause or governed by a gold clause is discharged on payment (dollar for dollar) in United States coin or currency that is legal tender at the time of payment. This paragraph does not apply to an obligation issued after October 27, 1977.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 985.)

STATEMENT OF FACTS

The Pazdur action was initiated after the trial court in the Inland action failed to give any opinion or statement on any point raised by Inland, but merely decided that none of the claims was properly pleaded. Thereafter, Plaintiffs in Pazdur were unable to decide how to finance the case and the authorized Petitioner to dismiss it. The court dismissed the action with prejudice on its own motion, doing so without any finding of fact. Petitioner had hoped that Plaintiffs would find a way to continue the fight.

In the order of dismissal, the court issued an order for Defendant to file memoranda in support of their fee request. No mention was ever made that counsel for Plaintiffs might be considered subject to an award of fees. So,

Petitioner did not appear at the hearing set for the award. At that hearing, the court fined Petitioner 2,139.97 in dollars, not in federal reserve notes. The court also denied Petitioner's former clients opportunity to obtain other counsel.

Lepucki is not appealing and the appeal is only by his counsel on the same ground that he cannot comply with the order to pay fees in dollars; and also on the ground that the action was not frivolous where slander was alleged against an Internal Revenue Service agent who asked for information to determine if the client was liable for tax and upon not receiving an answer, he informed the employer that the employee-client had lied by giving false information to the I. R. S. (rather than saying he gave no information). The gist of that case is

that an I. R. S. agent is not of high office and does not exercise great discretion in the course of his work and has no absolute or qualified privilege to injure others. The Court awarded fees and costs against the Plaintiff and his counsel without a hearing although the request for fees was made against Plaintiff and not against counsel (see Appendix).

JURISDICTION OF THE TRIAL COURT in each of the cases was based on the existence of a federal question: in Pazdur, Plaintiff objected to federal jurisdiction saying that withholding in anticipation of a possible future tax liability represents a conversion of property since no tax is payable until due on April 15th of the next year.

In Lepucki, objection was made to federal jurisdiction on the ground that

the I. R. S. agent exceeded his authority and acted as a private party, and on the ground that federal courts have no slander jurisdiction except where diversity of citizenship exists.

ARGUMENT: This Petition for a Writ of Certiorari ought to be granted for the following reasons:

I. The District Courts and the Court of Appeal for the Seventh Circuit departed from the accepted and usual course of judicial proceedings in the instant cases in that they appear not to have discerned or discussed the points raised by Plaintiff, but summarily deemed his pleadings as frivolous. It cannot be that the pleadings were frivolous because there exists no United States Supreme Court decision which holds that federal reserve notes are dollars.

Petitioner believes that he has been

charged with an accusation of frivolous conduct and abusing the processes of the Law only because he has had the temerity to characterize this nation's monetary and income tax systems as an outrageous fraud upon the people.

The lower courts refused to discuss the points that Plaintiff advanced, ignoring his efforts to distinguish prior cases or to show that they were erroneous. In the case of Edgar v. Inland, below, Trial Judge Kanne refused to allow Plaintiff's oral argument on the issue of this nation's monetary system. He wrote no opinion and, thus, gave Plaintiff no reasons for the dismissal of the case. The dismissal was not upon the merits, but upon the conclusion of the Court that a good cause of action had not been pleaded. Plaintiff did not seek to amend. However, an appeal was taken.

The Seventh Circuit Court of Appeals also refused to discuss the points that were raised, and refused to consider the possibility that the precedent upon which Appellees relied were decisions that misconstrued prior cases or misunderstood their import or were not correctly analyzed. The Appellate Court assumed the Law on Withholding was settled and that Appellants should not challenge it. The attitude seemed to be that the enactments of Congress were sufficient.

While the appeal on Inland was pending, a similar action, the Pazdur case, was commenced with Petitioner as counsel. This new case was plead in a different way than Inland in an effort to satisfy the trial court that the cause of action was plead adequately enough to justify offers of proof. This case was also heard before Judge Kanne. A motion to

dismiss was filed by Defendants. The Plaintiffs had been unable to apportion the expenses and fees in a way satisfactory to all and, so, Petitioner advised them that a dismissal would be forthcoming without an answer to the motion to dismiss. Because of Plaintiffs' continued disagreement over finances, Petitioner asked for authority to dismiss the case, which was given. Petitioner had hoped that before the Court dismissed the case on its own motion, the Plaintiffs would be able to settle their problem and resume prosecution of the case. That did not happen, and the case was dismissed by the Court which cited 26 U. S. C. 3402 (a) as authority for an employer to withhold wages. There was no discussion of Plaintiffs' attack on that provision, nor was there any discussion of the conflict of Section 3402 (a) with Section 3402

(n). Nor did the Court discuss the question of a cause of action against the employer for converting wages withheld from employees. It did not discuss the legality of taking the private property of an employee from his full pay or the impropriety of the company acting as collection agency for the I. R. S. (in Inland, the Seventh Circuit panel said that because there was no provision in the contract of employment forbidding deductions, the employer could deduct withholding "taxes," which ignored the fact that the true nature of such a provision would be to authorize the deduction which would otherwise be unlawful). Judge Kanne cited Campbell v. Amax Coal Co., 610 F.2d 701, as authority that withholding was proper. That case did not discuss the issue but merely cited U.S. v. Smith, 484 F.2d 8, a Wyoming

case, as authority for the proposition that the withholding was lawful. There is some discussion of that issue in that case, which said that Section 3402 did not violate the 5th Amendment Right against self-incrimination because (1) statements were offered to the I. R. S. (2) in a non-accusatorial setting, (3) the government had a right to gather information, and (4) the government had an unlimited power to tax.

Plaintiffs disagreed on all the above points for the following reasons:

(1) Statements made pursuant to the Withholding statutes are not offered but coerced.

(2) The information is not obtained in a non-accusatorial setting. Police have a right to question in order to find a suspect. Once they have a suspect they must respect his Constitutional rights

via a Miranda warning. In a tax case against a particular individual, there can be no pretense of seeking a suspect. The only person who can be suspected of owing a tax or who can be accused of not paying is that individual under investigation. He is the **only** suspect. Nevertheless, he is a suspect whose rights must be held inviolate. So, no questions may be asked of him without reading him his rights and he has the right to refuse to answer if he believes it **might tend** to incriminate him. The decision as to what may incriminate him lies **solely** with the government the decisions of which he cannot be required to anticipate. Thus, government may have the right to get information and it may have the right to ask a suspect for information, but that suspect has the right to refuse to give the information. If it be said that he

must give the information demanded, the maximum that he should be required to give is the raw data. He may not be required to construe the tax law and decide if and how it applies and he need not engage in complex computations in utilizing the data. Since experts cannot agree on what the law says or how it should be applied, any individual cannot be put at risk of criminal prosecution merely because he may not arrive at the same conclusion as the government, particularly since the government offers no hearing prior to a criminal prosecution.

(4) The court may be correct in saying that the power to tax is unlimited, but withholding is not a tax but a forced loan coerced in anticipation of a possible liability in the future for a tax not yet due, or payable.

Petitioner has discussed these

points in order to demonstrate to this Court that they are sound points and merit discussion whether the Court agrees with these conclusions. Petitioner is not raising these issues on appeal but mention them only to show his actions are not frivolous.

In the Inland case, the Seventh Circuit panel did not perceive the point Petitioner was making. That panel said that I was contending that federal reserve notes are not money. They are money, but Petitioner contends that they are not dollars and cannot be made a legal tender for payment of debts. This follows from a proper analysis of prior decisions of this Court.

In the Pazdur case, the Seventh Circuit awarded fees and costs against Petitioner and did not overturn the trial court's award of costs and fees against

me personally though Defendant had not requested any award against me, and even though the trial court had never indicated that Petitioner might be personally responsible for either costs or fees. Petitioner had told the clients that his representation had ended with the dismissal of the case and suggested that they obtain other counsel for the hearing on costs and fees. At the hearing, they had requested another hearing to obtain counsel. That request was denied and the Trial Judge proceeded with the hearing, and it then entered the award against me from which Petitioner appeals on the ground that the judgment is for dollars and there are no lawful dollars now in circulation so that it is not possible for me to comply with the order of the Court.

When Petitioner appealed from the

award in the Pazdur case, there was an appeal pending in the Seventh Circuit in the Lepucki case from Judge Moody in the the United States District of Indiana, Hammond division. The appeal concerned an action based on the conduct of an I. R. S. agent in Gary who asked Plaintiff for information so that a determination could be made whether a tax liability existed. Plaintiff gave no information, whereupon the agent levied a penalty against Plaintiff for giving false information. When the agent communicated to Plaintiff's employer, he, again, turned no information from Plaintiff into false information from Plaintiff. That was a clear slander which was repeated by the paymaster to co-employees of Plaintiff. The case was removed from the Lake County Superior Court to Federal Court over our objection that Federal Courts have no

common law tort jurisdiction except in diversity cases. Grounds for removal was the involvement of a federal employee. The case was then dismissed, erroneously, on the ground that the agent had total immunity, thereby, wrongly implying that the agent was a high official with large discretionary powers rather than an ordinary official with regular ministerial powers who could be sued for his torts. The trial court deemed the action frivolous and refused to consider the current trend in the courts to narrow or completely abolish the immunity doctrine, a creature of the courts.

Defendants filed a motion for an award of costs and fees from Plaintiff, without asking same of counsel. In spite of that fact, the Court entered an award for costs and fees against both Petitioner's client and Petitioner without

apportionment and without notice to Petitioner. Furthermore, no hearing was ever had on this issue. Petitioner's client appealed and the Seventh Circuit affirmed the trial court, awarding costs against Petitioner's client and against Petitioner. Fees were also awarded against Petitioner. In the same order costs and fees were awarded against Petitioner in the Pazdur case. It appears that the Seventh Circuit judges fined Petitioner for being so bold as to question precedent. Ignoring precedent is foolish, however, questioning precedent for cogent reasons should not be punished. The Supreme Court has held that meek submission is not the American way. In Laird v. Tatum, 408 U.S. 1, this Court said that:

> Those who already walk submissively will say there is no need for alarm. But submissiveness is not our heri-

> tage. The First Amendment was designed to keep government off the backs of people. The Bill of Rights was added to keep the precincts of belief and expression, of the press, of political and social activities free from surveillance. The Bill of Rights was designed to keep the agents of government and official eavesdroppers away from assemblies of the people. The aim was to allow man to be free and independent and to assert their rights against government.

Petitioner asserts that he was and is performing his right and his duty as a citizen and an attorney to follow his conscience in an attempt to correct error in the forum of the judiciary.

In "Pieces of Eight" by Dr. Edwin Vieira, Jr. (1983), Darby Printing Co., Atlanta, Ga., at 331, it is stated that the United States Supreme Court has never held federal reserve notes Constitutional. Dr. Vieira comments that the decisions of the Supreme Court are always open to question, in a reference to Smith

v. Allwright, 321 U.S. 649 (1943), 665. Whenever the validity of an act is sustained in good faith in reliance upon an erroneous interpretation of fundamental law, such a decision remains subject to reconsideration and reversal. When convinced of former error, the Court has never felt constrained to follow precedent, but has freely exercised its power to re-examine the basis of its Constitutional decisions. That is not only its prerogative, but also its duty. For that reason all Constitutional questions are always open. How then, Dr. Vieira asks, can an attorney act with professional irresponsibility by simply urging the courts to decide if the federal reserve note is unconstitutional? Further, if the Court should sustain the Constitutionality of such notes in "bad faith," and, in the words of Daly, thereby perpe-

trate "a fraud on the People," what duty would an attorney or a citizen have to acquiesce in such a decision? The answer is: none! Vieira quotes John Locke's An Essay Concerning the True Origin, Extent and End of Government, P. Laslett Ed. 1960:

> Where an appeal to the Law and constituted Judges lies open, but the remedy is deny'd by a manifest perverting of justice, and abarefaced wresting of the Laws, to protect or indemnifie the violence or injuries of some men or a Party of men, there is hard to imagine anything but a **state of war.** For whereever violence is used, and injury done, though by hands appointed to administer Justice, it is still violence and injury, however colour'd with the name, Pretences or forms of Law, the end whereof being to protect and redress the innocent, by an unbiased application of it, to all who are under it; whenever that is not bona fide done, **war is made** upon the sufferers, who, having no appeal on Earth to right them, they are left to the only remedy in such Cases: an appeal to Heaven. (emphasis added)

Vieira then asks whether the "legality"

of the federal reserve system is upheld by the courts in a manifest perverting of Justice and a barefaced wresting of the Laws without fear of criticism. Is it not, he asks, the duty of every attorney who swears to uphold the Constitution to be ever vigilant for and outspoken against any such perverting of Justice and wresting of the Law?

Petitioner, therefore, asserts that he has the right and duty to conduct himself both professionally and personally in accordance with the Constitution of the United States and that his conduct has not been frivolous in any respect, but, rather, patriotic!

Petitioner also argues that he is not frivolous in questioning the prior decisions of trial and appellate courts. Although they are entitled to respect, they cannot be taken as infallible. Any

prior decision is open to a reasonable re-examination. Circumstances did not permit the Inland Plaintiffs to come to this honorable Court; however, until an issue has been settled by this Court, we must be able to raise it again and again in the lower courts. The road to that settlement must not be hindered by unfounded charges of frivolity and the penalties that attach to such charges.

Petitioner believes that the lower courts acted improperly in accusing him of frivolous conduct because their opinions did not respond to the issues raised about the validity of prior decisions. They brooked no argument, assuming their correctness and proceeded forthwith to castigate me without substantiation. I submit that they had a duty to write opinions undergirding their rulings, and not merely to rule without

comment. Opinions setting forth the logic and reasoning of a court are always necessary to avoid the rule of man and to assure the rule of Law based upon reason and fair play, and to instruct the Bar on the views of the Bench so that lawyers may be in a better position to advise their clients as to reasonable outcomes in litigation. Here, the lower courts did not answer any of the questions or solve any of the problems which were presented. They have tried, instead, to intimidate Petitioner's clients and Petitioner into "submissiveness" by putting our duty to question precedent believed to be in error into the category of "frivolous" and penalizing a conscientious attempt to perform that duty.

II. If Petitioner's conduct is deemed frivolous by this Court and the awards of costs and fees against him

upheld, then the question arises whether it is possible to comply with an order of a federal court to pay dollars when there are no lawful dollars in circulation now, or for many years past.

A lawful judgment cannot be rendered in anything but dollars. Shaw, Savell & Albion Co., Ltd. v. Fredericksberg, 189 F.2d 554. Likewise, it is only possible to satisfy such a judgment in dollars. If dollars do not exist, the judgment cannot be enforced or satisfied. This begs the question: What is a dollar? Is it a tangible or is it an abstract concept, a measure of a tangible?

The dollar is mentioned twice in the United States Constitution, in Article I, Section 9, Clause 1 and in the 7th Amendment. It is not defined in either place. Whatever a dollar meant to the people who inserted it in the Constitution, is the

meaning that the word must have forever until the Constitution is amended and a different meaning given to it.

Referring, again, to Vieira's work, Article IX of the Articles of Confederation established a system of gold and silver coinage for the nation. A search of pages 724-5 of the Journals of the Continental Congress, 1774-89, W. Ford Fd. of 1905, reveal that a committee of Congress did recognize that the confederation of the States ought to have but one money unit by which all the various domestic and foreign coin could be measured and judged and that the unit ought to be the same as the Spanish milled dollar of silver which had long been in usage in the colonies and which was called, simply, a dollar. Soon thereafter, Congress resolved that the money unit of the United States would be a

dollar. It did not specify the weight or fineness of that dollar. Pages 499-500, 5 Journals of the Continental Congress. Vieira further tells us that in 1786, the Congressional Board of Treasury concluded that the Congress intended by that resolution to adopt the dollar that was then common in the United States as the money unit. The Board calculated that the money unit would contain 375 and 64/100s grains of find silver and would be worth as much as much as the new Spanish dollar. The Coinage Act of 1792 referred to the fact that the money unit was to be the same as the value of a Spanish milled dollar but adjusted the number of grains to 371.25 grains.

Thus, it is clear that when the framers of the United States Constitution referred to a "dollar," they meant a unit equivalent to a Spanish milled dollar.

This definition has **never been amended.** It is still our Constitutional money unit standard. The value of all other coin and currency must be determined by a reference to this standard of 371.25 grains of fine silver whatever the market value of that quantity of fine silver happens to be. This requirement has not been changed. In Blackstone's Commentaries on the Law of England (Amer. ed. 4 vo. and Appendix, 1771-3), at 276 et seq., it is stated:

> Money is a universal medium of exchange and a common standard by comparison with which the value of all merchandise may be ascertained ... in order to fix the value of the standard, the weight and fineness of the metal are taken into consideration together, and when a given weight is of a given fineness, then it is of the true standard and called sterling metal.

So, this country is now, and always has been, on a Constitutional standard of silver. Gold is only a statutory stan-

dard. The value of any statutory standard is ascertained by comparison to the Constitutional standard. Historically our nation has had a monetary system that:

1) used precious metal as money, a usage corroborated by the power given to Congress to "coin" money and by the absence of power given to "print" money or to issue bills of credit to use as money;

2) adopted a physical measure of silver, historically fixed as to weight and fineness as the national money unit;

3) regulated the value of all other coinage and currency by comparison of their various weights and fineness to that money unit;

4) acknowledged the propriety of permitting the market to trade free-

ly in gold and silver and to determine the amount of money in circulation through free coinage.

The founders of the national government attempted to insure a hard money system that would exclude everything but gold and silver coin as a circulating medium of exchange. This was accomplished by denying the States the power to emit bills of credit and by refusing to grant that power to the national government, by granting the national government the power to coin money and by denying that power to the States, and by forbidding the States to make anything but gold and silver coin a tender in payment of debt. The value of these coins was to be judged by comparing them to the standard of a dollar of silver measuring 371.25 grains of fine silver. In Craig v. Missouri, 29 U.S. 410 (1830),

442, 443, this Court said that this standard would guarantee that the real dollar would represent property and not the shadow of property.

A hard money system does not forbid the use of paper money. People may voluntarily accept whatever they wish as payment for debts. They must be free to refuse a paper tender that does not have value at par with the Constitutional standard. Veazie Bank v. Fenno, ____ U.S. ____, 19 L.Ed. 482, is often cited as authority for the proposition that the United States can issue bills of credit and that notes issued and backed by the credit of the United States are such bills of credit. But as much as that decision flies in the face of the Constitution, imputing to the federal government a power not granted, that case did not go so far as to say that such bills

could be made a legal tender. Rather than supporting federal reserve notes as legal tender, Veazie denies them the ability to become legal tender because they are not at par with the silver dollar standard. Thus, such notes may pass as money to those who are willing to accept them but they may not be forced upon anyone as legal tender.

Legal tender is our highest form of money because it is certified to have the value, as measured by the Constitutional standard, displayed upon its face. It is a guarantee that the consideration given is equal to that Constitutional standard and that it must, therefore, be accepted at its face value as equal to the consideration for which it is exchanged. Any "tender" which does not meet that standard is **debased** and may pass only for its intrinsic value and no more. Thus, if a

particular form of money does not have the value, as compared to the standard, that is displayed upon its face, it cannot pass as legal tender. This Court, in Knox v. Lee, 79 U.S. 457, while permitting bills of credit to issue "for the time being" due to an exigency which imperiled the survival of the nation, recognized that the validity of paper depended upon its redeemability in the proper coin. In other words, irredeemable paper, such as federal reserve notes, can not possess the character of legal tender because actual value can not be imparted to money by either legislative or judicial fiat. Justice Strong showed his lack of appreciation of the function of an honest monetary system in erroneously stating that it was not correct to speak of a standard of value, thereby refuting history and the intent

of the framers of the Constitution. He said that since value was subjective and an ideal, it could not be measured. Justice Strong confused worth and value. Worth is the subjective intensity of desire to possess. Value is the objective measure of the amount of tangible property one would be willing to exchange for some thing worth more to him. So, value can be measured objectively - it is a measure of the specific amount of consideration demanded in order to consummate a trade. The value of any particular good or service can be determined by ascertaining how much of such a good or service is required to make parity with the standard, i.e., the fixed amount and fineness of the substance used as the medium of exchange. Rather than establish a parity of each good or service with every other good or service, it was,

and is, more convenient to establish the parity of all goods and services with a standard measure. The dollar only performs that function if it is a true Constitutional dollar measuring 371.25 grains of fine silver, the value of which amount of fine silver is easily ascertained in the marketplace.

Justice Strong erred again in stating that the gold or silver dollar is not a standard of a dollar but a representative of it. He treated the dollar as a tangible, rather than a measure of a tangible. But, if a dollar is treated as a tangible, then its value must be determined as is the value of any other goods or services. The difficulty is in determining with what it shall be compared. If a dollar of silver is not the standard of measure, then by what standard can it be measured? There can be none other than

under the Constitution. If a dollar is properly the measure, then (a) it cannot also be tangible, and (b) it solves the problem of what is to be used as the standard. For example, a quart is not tangible, but milk measured in quarts is tangible, and, furthermore, a quart cannot be used to measure itself, there being no such thing as a quart of a quart. Under Justice Strong's scenario, a dollar of silver is only representative of the standard, but since the standard is based upon a dollar of silver, that is somewhat akin to saying that I am a representative of myself, clearly a useless and confusing tautology.

Justice Strong further erred in saying that the Court had the power to declare that, for a time, the promises of the government were the equal of the representative value determined by the

coinage acts. He would declare that because he says it is so, it is so, although it is preposterous to say that a promise to pay is equivalent to actual payment.

It is evident, then, that a dollar is a measure of a specific quantity and quality of the substance used as the medium of exchange, and affords a precise way of expressing the value of everything in terms of one commonly accepted thing. There is nothing subjective in that process. It is not necessary for an honest monetary system that the value of the substance used as the medium of exchange remain constant in its purchasing power - the free marketplace must be allowed to determine that. It is necessary only that the standard is not allowed to change in its quantity or fineness which must be as certainly fixed as is the

North Star in the heavens, so that it may provide as steady a guide to traders in the market as the Star provides a course to the mariner.

Congress may, under its power to regulate the value of coin minted by the United States, designate the weight and fineness of any such coin. Whatever value is designated, when the coin is substituted for any other consideration in a trade, the amount of coins must have value equal to the consideration to be exchanged for the coins. This is because every trade involves an exchange of consideration deemed to be of equal value. The value of that consideration is determined by the number of fractions or multiples of the standard unit of money that is needed to achieve parity with such consideration.

The private bankers who own the

federal reserve banks comprising the federal reserve system have been unfairly and unlawfully granted a special privilege. They pay only the cost of printing their notes which they then can exchange with the United States for interest bearing bonds. These bonds obligate the United States to "return" 100% of the face value of the bond **plus** interest although the bankers in fact give or loan the United States **nothing** which may validly be returned. To permit anyone to so profit without investing time, labor or material is unfair because to do so is to allow that individual or group of individuals to enjoy the fruits of the labor of others without having contributed anything or without having produced anything of a tangible nature, i. e., without earning it.

The bankers are further allowed to

loan whatever multiple of the face value of each note and bond created by the system which the reserve requirements allow them to loan. Such reserve requirements are, of course, under the control of the system itself. These debt instruments are deceitfully referred to as "dollars." Real dollars are a measure of **wealth.** Debt instruments do not represent real wealth, but only a potential claim upon real wealth at some future date. To declare such an obligation to be of the same value as the real wealth it promises later violates the rules of economics and trade, the principles of truth and honesty, natural Law, and the Law of God. The natural object of trade is to get as much as one gives and if this does not happen there will be no trade - unless the government interferes. The only paper that will pass in trade is paper that is re-

deemable on demand at par in Constitutional coin - unless the government interferes.

Inasmuch as many deals are made for a price expressed in dollars, it might be argued that the people involved in such deals intended to use federal reserve notes denominated in dollars, and not to use Constitutional dollars. This argument could have validity only if the notes did not masquerade as Constitutional dollars and the users could be presumed to know the difference. Nevertheless, such an argument cannot be advanced in the case of judgments of courts. As creatures of the Constitution, they must give judgments in Constitutional dollars which have as their standard the Spanish milled dollar of silver. Courts do not have the option of merchants who may, if they so choose,

deal in negotiable or non-negotiable paper. Those charged with upholding the Constitution cannot order payment in paper deemed to be a legal tender but which in fact has no real present worth, or value. Where judgments of courts are concerned, it is not a matter of equalizing considerations between those who voluntarily agree to an exchange. The judgments of courts are involuntary as against whom they are rendered.

When a government compels its suppliers to use federal reserve notes, it is, in effect, **forcing** them to extend credit to the government, i.e., make a loan to the government. The creditor then passes this paper on to another who must accept it in exchange for his goods or services as if it were a dollar - even though it may be valued intrinsically at a minute fraction of a dollar.

Justice Strong's error is perpetuated by the belief that a dollar is a tangible rather than an abstract measure. Under this belief, the object of a trade is viewed as the dollars one is to receive, a fallacious perspective. If one party to a trade agrees to accept dollars he should do so because he expects to be able to get value equal to the value of those dollars in terms of the standard unit of money - 371.25 grains of fine silver. If his price is $10, he is not bargaining for 10 dollars but for 371.25 grains of fine silver times 10, or 3712.5 grains of fine silver. The object of a trade is the medium of exchange and not the expression by which it is measured. We do not trade for measures, but for valuable properties. Congress was given the power only to coin money; so, if paper is used at all it must only be a

substitute for coin just as coin is a substitute for any other consideration in kind. If paper cannot be immediately converted to coin, measured in the standard unit of money, then it cannot have the character of legal tender.

Paper was originally conceived as a representative of money, i.e., because coins are heavy and bulky and inconvenient to carry. So, paper was originally issued as a warehouse receipt for metal. That must still be its only function **if it is to be lawful money**, in fact, and not just in name. Title 12 U.S.C. 152 says that the lawful money of the United States is its gold and silver coin and does not grant anything else that status.

Historically, paper money in this country was not misrepresented as legal tender - it was not claimed that a gold certificate was a dollar but rather such

certificates displayed the statement that upon presentation of the certificate to the proper authorities, $10 in gold would be paid to the bearer. A certification upon the face of silver certificates guaranteed that the dollars of silver indicated were on deposit in the U. S. Treasury payable on demand to the bearer. The early federal reserve notes promised to pay dollars to the bearer but also bore the statement that they were redeemable in gold or lawful money. In the 1930's federal reserve notes were introduced which promised to pay dollars on demand but were redeemable only in lawful money without mention of gold or of silver. In the 1950's, United States Notes promised the bearer dollars on demand but had no redemption clause at all. Finally, United States notes in the 1960's were issued bearing no redemption clause

or promise to pay! This note, rather than appearing to be a claim on a certain number of dollars worth of the medium of exchange, purported to be the dollars itself. This deceitful representation flatly contradicts the holding of this Court in Bank v. Supervisors, 74 U.S. 26 (1869) wherein it was stated that a "dollar was a certain amount of gold or silver." (see also Bronson v. Rodes, 74 U.S. 229 (1869), 249)

The situation now is one in which federal reserve notes are owed to private bankers (not to bearer as are U.S. Notes) which pretend to be dollars although the holder-bearer cannot demand nor get anything of value from the issuer of the note. The final hypocrisy is the treatment of paper, in the form of federal reserve notes, denominated as 100 "dollars" as having greater value than ano-

ther identical piece of federal reserve note paper in a smaller denomination. The intrinsic value of each piece of paper is the same so that they cannot actually be dollars but only can only fraudulently claim to represent differing values.

It would actually be a violation of the Law to demand or to take redemption of these notes, as 31 U.S.C. 5118 forbids anyone from demanding payment in silver or gold. But the U.S. will give these irredeemable promises to anyone who is foolish enough to exchange precious metal for such paper. Such people will be paid at the rate of one and a quarter federal reserve notes each purporting to have a face value of a dollar according to the provisions of 31 U.S.C. 5116 and they will be paid at the rate of forty-two and nine-tenths federal reserve notes having

a face value of $1 for each ounce of gold according to the provisions of 31 U.S.C. 5117. That is about 1/5 the market value of silver and about 1/8 the market value of gold. 371.25 grains of fine silver are about 3/4 of an ounce of silver which has been trading in 1985 at about 6 such notes per ounce, or about 4 1/2 notes for 3/4 ounce. This demonstrates that federal reserve notes have no relationship or parity with the Constitutional standard's value as determined by the marketplace. In fact, we no longer have a standard unit of value, because 31 U.S.C. 314, which had made gold, 9/10 fine of such weight as determined under the provisions of Title 31, the standard, was repealed and not re-enacted. The exchange value of federal reserve notes is now vested in the private bankers who have total discretion over how much "mon-

ey" to print and how much to charge for its usage.

Justice Field in his dissent in Juilliard v. Greenman, 110 U.S. 421 notes that:

> They are promises of money but they are not money in the sense of the Constitution. The term 'money' is used in that instrument in several clauses; in one congress is authorized to borrow money; in another, to coin money; in one it is prohibited from withdrawing money from the Treasury except in consequence of appropriations made by law; and in another declaring no state shall coin money, and it is a settled rule of interpretation that the same term occurring in different parts of the same instrument shall be taken in the same sense unless there is something in the context indicating a different meaning was intended. How to coin money is to make coin out of metallic substances, and the **only** money, the value of which congress can regulate, is **coined** money, either of the mints or of foreign land.
>
> * * *
>
> The power to coin money, as declared by this court, is a great **trust** devolved upon congress carrying with it the duty of creating and of main-

> taining a uniform standard of value throughout the Union, and it would be a manifest **abuse** of this trust to give coins issued by its authority any other than their real value.
>
> * * *
>
> By debasing the coin, when once the Standard is fixed, is meant giving to the coin by their form and impress a certificate of their having a relation to the Standard different from that which in truth they possess; in other words, of giving to the coins a **false** certification of their value. (emphasis added)

Such debasement is exactly what the Juilliard Court allowed Congress to do, with respect to bills of credit - though they were to be redeemed later. Since Juilliard, Congress has gone much further and unconstitutionally granted the money power to private bankers and has also done away with redemption so that the word "dollar" on federal reserve notes is a completely false certification of its value. A federal reserve note has no value under the Constitution. This

Court, or any other court in this land, may not use any other reference point than the Constitution to measure these notes. **Real** money is never created; a particular substance is merely measured into consistent units and used **as** money. Federal reserve notes are "created," having no substantial backing of their own, and represent only a facade. Their only value is that which is imputed to them legislative, executive and judicial fiat. A declaration that they are legal tender, i.e., equivalent to the standard Constitutional dollar, is an outright, knowing lie by our government in whom we are to repose trust and faith. There is no power granted to Congress to use or to delegate to a private sector institution, like the federal reserve system, to print legal tender.

In 1864, the Supreme Court of the

State of Indiana, in Thayer v. Hedges, 22 Ind. 282, confirmed that this country was intended to have specie currency, stating:

> ... that the power to coin money is one power, and the power to declare a thing is legal tender is another and different power; that both were possessed by the States severally at the adoption of the Constitution; that by that adoption, the power to coin money was delegated to the federal government, while the power to declare a legal tender was not, but was retained by the states with a limitation, thus: Congress should have the power to coin money and no state shall make any thing but gold and silver coin a legal tender. States, then, though they cannot coin money, can declare that gold or silver coin, or both, whether coined by the Federal or the Spanish or the Mexican government shall be legal tender. And as the Congress was authorized to make money only out of coin, and the States were forbidden to make anything but coin a legal tender, a specie currency was secured in both the Federal amd State governments. There was thus no need of delegating to Congress the power of declaring a legal tender in transactions within the domain of Federal legislation. The money coined by it was the necessary medium.

It follows that Congress has no power to declare federal reserve notes a legal tender nor have courts the power to enter a judgment for such notes. It cannot be inferred that a power to declare a legal tender is an implied power needed to carry out the coining power. If coining power is properly executed the coin speaks for itself and the impress of the government certifies that it speaks truthfully. Specie money is honest money. In 1930, a dollar measured 24 grains of fine gold. The value of an ounce of gold was set at $20. 30 ounces of gold would buy a new Ford automobile priced at $600. Today a new Ford automobile will cost 9000 to 10,000 federal reserve notes, or about 30 ounces of gold.

These federal reserve notes, falsely and fraudulently designated as dollars are the **only** currency now available for

ordinary use in the United States. This is admitted in several publications printed by various federal reserve banks, for instance, Modern Money Mechanics, I Bet You Thought and The Two Faces of Debt.

The trial court and the appellate court would have us believe that these pieces of paper are lawful money. Title 12 U.S.C. 152 says that lawful money consists of the gold and silver coin of the United States; title 12 U.S.C. 411 says that these notes may be redeemed in lawful money. This alone is proof that these notes are not lawful money because if they were there would be no need to provide for their redemption in lawful money. And certainly it is sublime to suggest that as lawful money they could redeem themselves. In fact, they are irredeemable since Title 31 U.S.C. 5118

provides that our lawful money may not circulate and that no one may demand a payment in gold or silver. In effect, our lawful money has been made unlawful and deprived of the circulating characteristic of money.

To complete the charade, Title 31 U.S.C. 5103 provides that this irredeemable paper is our legal tender, transforming the promise of payment of money of account into the money of account itself. An obligation by legislative fiat has been given the value of an executed promise even before its execution. That is nothing but rank fraud.

A note is usually an account receivable to the holder - but not a federa reserve note. The holder is not the payee, rather some reserve bank is the payee and collector of the interest, as well. The interest is nothing short of

perpetual. The principal must stay in circulation if we are to have any currency at all. But there is no paper printed to pay the interest. So, interest payments deplete the circulation and mandate new issues of paper, which also bear interest. These new issues are necessary in order to maintain sufficiency of currency in circulation in an ever widening glut of these intrinsically worthless pieces of paper.

If Petitioner, and other citizens, are forced to use this fraudulent paper, it can only result in an increasingly greater taxation of our wealth to be transferred to the private banking system in order to defray the rapidly growing and voracious interest charges on the national debt. Debt service now represents three-fourths of our annual deficit. The debt is now doubling every

decade and its growth is accelerating, a previously mentioned inevitability. The Justices of this Court see this with their own eyes every day of their lives. They must agree that we can no longer afford this paper money.

If federal reserve notes are declared not to be dollars but promises to pay dollars, they could still circulate and be used by those who chose to accept a note of this kind as payment; but they would no longer function as a legal tender. The private bankers would lose their free ride on the backs of the rest of the American public who would start to receive pay equal to their productivity. Prices would tend to stabilize and inflation would be difficult to maintain, but more importantly, honesty would return to the monetary system. It wouldn't be perfect, but, as Justice John Marshall

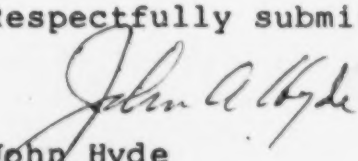
stated in Craig v. Missouri, 4 Pet. 90, at 103:

> We have been reminded by one side of the dignity of a sovereign State, and of the humiliation of her submitting herself to this tribunal, of the damage which may well result from the infliction of a wound in that dignity by the other, of the still supreme dignity of the People of the United States who have spoken their will in terms we cannot misunderstand.
>
> * * *
>
> To these admonitions we can only answer that if the exercise of that jurisdiction which has been imposed on us by the Constitution and the Laws of the United States shall be calculated to bring on this danger which shall have been indicated, or if it shall be indispensable to the preservation of the liberty and independence of these States, these are considerations which address themselves to this department which with perfect propriety may be influenced by them. This Department can listen only to the mandate of the Law and tread only that path which is marked out by duty.

Petitioner submits that whatever the political consequences may be of declaring that federal reserve notes are not

dollars, it is the duty of this Court to make that declaration and Petitioner prays that this Court will grant the Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit. Otherwise, all previous decisions concerning concerning the issue of the definition of a dollar presented herein will be repudiated.

Respectfully submitted,



John Hyde
Attorney at Law
1224 Hoffman Street
Hammond, Indiana 46327
1-219/937-9400